GRAND JURY BEGINS INQUEST ON ELECTION

Foreman Parker Asks if the Attorney-General Can Be Excluded and Judge Gear Answers That He Can if Desired.

The Grand Jury, which is intrusted with the duty of investigating alleged election frauds, stands as follows:

William Legros,
Robert K. Pahau,
O. P. Emerson,
F. J. Church,
Thomas R. Mossman,
Wm. H. Crawford,
Henry A. Giles,
A. R. Bindt,
Wm. L. Peterson
Samuel Parker,
Charles F. Herrick,
W. L. Eaton,
Charles Wilcox,
Richard L. Gilliland,
George J. Campbell,
Ulysses H. Jones,
Charles W. Booth,
John K. Inch.

Judge Gear at 1:30 yesterday afternoon charged the grand jury regarding the request made by C. W. Ashford for an investigation of the Oahu county election. At the outset he stated that the laws of the Territory provided for the conduct of elections and included rules and regulations having the force of law. He was not passing upon the subject as a matter of law, but would inform the grand jury that the Organic Act continued in force the laws of the Republic of Hawaii providing for the purity of elections. They were aware that an election was held on the third of this month for county officers. Certain information had been presented to the court, which would not be read then but would be handed to their foreman. Neither would the court give them any instructions about the registration of voters.

SINK PARTY FEELING.

They were to investigate cases relating to the county election regardless of all party feeling. A great many witnesses had been subpoenaed for their examination. The court hoped the grand jury would take up the matter in the spirit in which it should be taken up, remembering their oaths. Their investigation must not be for the purpose of aiding any party or candidate. They must lose sight entirely of all political affiliations they individually might have. The statutes were those of the Territory of Hawaii and were for the benefit and protection of all alike.

ACT WITHOUT FAVOR.

It was their duty, if they found that any offenses against those laws had been committed, to bring an indictment against every offender no matter who he might be. There were two parties contesting the election—the Republican and the Home Rule parties. Let no guilty man escape. Lose sight wholly of the political situation.

The grand jury had the disposal of the services of officers of the court. They might subpoena any witnesses they pleased, who they thought would be able to give light on the investigation. It might be their duty to subpoena witnesses about whom they knew nothing if they supposed such could furnish useful evidence.

KEEP PETITION SECRET.

They would be handed a communication, which accompanied the request for an investigation, for their guidance. Copies of the laws, rules and regulations read to them would also be provided if they desired. The communication was to be kept secret because it contained names of persons against whom no proof of wrong-doing might be presented.

Samuel Parker, foreman of the grand jury, asked if it would be necessary to have the Attorney General or his deputy present in the grand jury room while they were examining the witnesses.

MIGHT EXCLUDE ATTORNEY GENERAL.

Judge Gear answered not unless they wanted the Attorney General's presence. The Attorney General had subpoenaed a number of witnesses and it was proper that he should have the opportunity of examining them. The statement made about the Attorney General and his department, with the petition for investigation, had been withdrawn and, so far as the court understood, the Attorney General was not connected with the charges. It might be proper, in some cases, not to have the Attorney General there. He supposed the Attorney Genral did not object to the grand jury's examining into the matter without the Attorney General's presence.

SHOULD RECOGNIZE HONESTY.

Deputy Attorney General Peters stated that the request of the foreman for instructions on this point was a proper one and came within the court's province for consideration. So far as the law was concerned, it was perfectly proper for the grand jury to request his presence or desire his absence, but the speaker thought that the request, as well as the instructions of the court in answering it, should at least take into consideration the honesty of the Attorney General's department and its desire to investigate the matter fearlessly and honestly.

Judge Gear remarked that the grand jury might act on its own hook, to which Mr. Peters responded that such was the law.

A JUROR'S MISGIVINGS.

A grand juror here asked the court to have the number of the panel increased to twenty-two or twenty-three members. There were Home Rulers, Republicans and Democrats on the present small panel, this juror said, and three men might stand out and prevent an indictment.

Judge Gear answered that if any one man or any three men on that grand jury were capable of disregarding their oath, let them say so and they would be excused from further service on the grand jury. He called on them, if any of them would consider his own party in the investigation, to say so. None of the grand jurors responded.

COULD NOT CONVICT.

Continuing, the court said that the grand jury could not convict anybody. A man had to be tried, to be convicted or acquitted, by a jury after he was brought into court under an indictment.

The grand jury were not to pass on the guilt or innocence of a party, but to decide whether there was probable cause to believe that he committed the offense on the ex parte evidence before them. If twelve or fourteen men could not agree, it was better to let the man go.

CROWD IN ATTENDANCE.

With three jury courts in session and about a hundred witnesses subpoenaed for the grand jury, there was a great crowd jammed about the entrance as well as inside Judge Gear's court room when the charge was being delivered. Many natives without compulsion to attendance at court swelled the throng.

FREEDOM TO WITNESSES.

Shortly after the grand jury retired to the Supreme Court room, Deputy Attorney General Peters came out and released a number of witnesses until called by messenger or telephone. This regard for the time of busy men was much appreciated. Several witnesses were called in during the afternoon.

THE UNTERRIFIED.

Republicans among the witnesses were not the most serious looking of the multitude. One of them said he had no objection to testifying to all he knew about unlawful practices, as his testimony in that regard was liable to send at least one Home Rule politician on the reef.

SHOULD BE DISQUALIFIED.

There was considerable adverse comment on the outside regarding the absence of an order to disqualify the defeated Home Rule candidates on the grand jury from sitting in the election investigation. There are two of them—Charles W. Booth and Chas. Wilcox—on the panel.

JURIES ARE KEPT BUSY

Two Out at Once Considering Cases.

Two juries went out to consider their respective verdicts almost at the same instant yesterday afternoon, between four and five o'clock. One was from Judge De Bolt's court with the land trespass case of Fredericke Nolte against J. A. Magoon. The other was from Judge Robinson's court with the suit for slander brought by M. K. Nakuina against Thomas G. Thrum. Before the former case was argued and given to the jury, Judge De Bolt and the jury took a ride out to Manoa valley to view the premises.

CRIMINAL CALENDAR.

Sarikawa was tried before Judge Gear yesterday for selling a lottery ticket. W. S. Fleming appeared for the Territory, and J. W. Cathcart for the defendant. The following jury was empaneled: J. L. Aholo, E. Norrie, S. Koloewa, A. A. Montano, E. K. Rathburn, Geo. Woolsey, J. P. Makainai, J. B. Pakele, J. S. Low, L. R. A. Hart, J. F. C. Abel and W. M. Bush. The jury was only out a few minutes when it returned with a verdict of not guilty.

Another case against Sarikawa was nolle pros'd.

No other case was brought on for trial yesterday afternoon.

PROBATE MATTERS.

Robert F. Lange was appointed by Judge Gear as temporary administrator of the estate of In Chock, deceased, under bond of $1000, and authorized as such to sell the property either at public auction or private sale.

David Dayton, administrator of the estate of Charles Halvorsen, deceased, has filed an inventory showing a valuation of $1370.50.

Annie Jaeger petitions that she be appointed guardian of her minor son, Samuel Allen Jaeger, who has property in his own right.

LAME LANGUAGE.

John D. Willard and Charles F. Peterson, attorneys for plaintiff, have filed in the Supreme Court a brief in the case of George Mundon vs. S. K. Kaeo. One of the points of law on which defendant appealed from the District Court of Lihue, Kauai, was thus stated: "That the trial magistrate disallowing the evidence of one T. Onokea." Besides replying that "this is not English and is ambiguous," the attorneys for the plaintiff deny that there is any merit in the point, as there is nothing in the record to show what evidence of Onokea's was disallowed, and they could not assume that any evidence was disallowed. Defendant in this case is the candidate who defeated the plaintiff's attorney, Willard, for county attorney in the Kauai election.

VARIOUS ITEMS.

Lohe Kekoa, one of the defendants to a bill of revivor brought by Kaniniu (w) against Kalaj and others, by his attorney, C. F. Peterson, enters a demurrer in which it is claimed among other things that several persons have not been made parties who should be.

In the case of W. O. Smith et al., trustees of Gear, Lansing & Co., vs. Emmett May, the plaintiffs by their attorneys, Thayer & Hemenway, have entered a demurrer to the defendant's plea of setoff.

Plaintiff in the suit of Allen & Robinson, Ltd., vs. Annie Schrei Reist has filed exceptions to the verdict for defendant rendered by direction of Judge De Bolt.

Judgment has been entered for plaintiff with costs taxed at $107.50 in the action to quiet title of Margaret Cullen against T. F. Lansing. It is for two pieces of land in Koolaupoko amounting to 0.47 acre.

Judge Gear appointed E. P. Dole as guardian of the Campbell minors, with special regard to their San Jose, Cal., interests, under $5000 bond.

Her Baby for Sale.

Giving evidence of character for a man charged at North London, a witness declared that he was eccentric. Mr. Fordham—"Can you give an instance of his eccentricity?" The Witness—"Well, yes, I can; during the fourteen years I have known him he has never been a minute late in getting to his work." Mr. Fordham—"And you call that being eccentric?" The Witness—"Yes, certainly, for a workingman."—Ex.

Dashaway—"A few short hours ago I was sitting with a girl, telling her she was the only one in all the world I ever loved, and so forth, and so forth." Cleverton—"And she believed you, didn't she?" "How could she help it? Why, I believed it myself."—Life.

ALL ABOUT A HORSE

Borrowed by Dunn But Not Lent by Berrey.

Thomas Dunn, chief yeoman at the United States naval station, was yesterday committed to the circuit court for malicious injury by Judge Lindsay. Q. H. Berrey was the complainant and the whole trouble was over a horse owned by Berrey which he claimed Dunn borrowed without leave, and which ran away. The defendant was afterwards released on his own recognizance.

Berrey claimed that while he and his wife were visiting the volcano, Dunn borrowed Mrs. Berrey's horse, and that while being driven by Dunn, the animal ran away, injuring itself and damaging the phaeton. Berrey testified that Dunn had admitted to him taking the horse without permission, saying that he simply wanted it to go to town and hadn't time to wait for a car.

On cross examination the defendant attempted to show that Berrey was simply using the criminal courts to collect a civil debt for damages. Berrey admitted under cross examination that he was willing to drop the prosecution if Dunn had paid him for the damages. He had agreed to do this because Dunn said his wife was nervous and didn't want any trouble. He admitted also that he had agreed to settle for $180 which was what the horse had cost him and that everything had been satisfactory until Dunn had refused to pay the amount.

The defense was that the horse and buggy were not injured maliciously and that the defendant had agreed to pay the damages. Dunn denied that he had taken the horse without leave but said that he had been asked to take care of the horse by Berrey's sister and was attempting to exercise the animal when it ran away. He testified also that he had paid for the repairs to the carriage and that he had also agreed to pay for the care of the horse; also that the animal was not seriously injured, simply sustaining a few scratches. Dunn claimed that the horse was hitched up for him by the Japanese servant who had been left by Berrey in charge of the property.

A number of witnesses also testified to the good character of Dunn. These were Acting Paymaster Mac Wilkie, W. H. Hoogs and I. S. Dillingham.

Judge Lindsay held that the evidence was sufficient for a jury to pass upon and accordingly committed the defendant to the grand jury on a charge of malicious injury. Dunn was released upon his own recognizance.

PACIFIC MAIL'S NEW FOLDER

A handsome new folder has just been issued by the Pacific Mail Steamship Co., telling of the delights of a trip around the world. The booklet contains a complete description of the new liners Korea and Siberia and also deals liberally with the attractions of Hawaii.

The folder is handsomely illustrated, the cover being in colors—a pretty girl standing at the steamer's rail and waving good-bye to friends on shore. The illustrations of Hawaii are "Nuuanu Avenue, Honolulu," "View of Diamond Head" and "The Pali." Excursions described are to Punchbowl, Tantalus, Diamond Head Crater, Waikiki Beach and to the volcano.

Hot Beecher Letter.

Among some letters given by Major J. B. Pond to Dr. Lyman Abbott, editor of the Outlook, which were written by Henry Ward Beecher is the following one, of which Dr. Abbott says:

"The letter which follows I judge he never sent, since he was not accustomed to keep copies of his letters, and this copy, in his own handwriting, is in the correspondence."

"Dear Sir:—I have received and read your long and extraordinary letter. Its false statements, its fierce arrogance, its base innuendoes can be charitably construed only on one of two theories: (1) That you are insane; or (2) That you are a lineal descendant of that Ass on which Christ rode into Jerusalem, and who ever afterward regarded himself as an authority in all religious matters; from him have come down an innumerable posterity, eminent among which I think you stand."

A woman came down to Park Row, New York, the other morning with a baby in her arms and, peering through the advertising window of one of the big dailies, dictated the following and asked to have it inserted:

"For sale——My little Leopold Wagner. He is only one year and two months old, with blue eyes like the sky and light hair, and chubby and good like an angel. I cannot support him any more. I am a hard working woman and I love my Leopold, but will sell him for $500 if I get it from a nice Jewish family. Mrs. Nellie Wagner, 84 Cannon street."

DOWER LAW EXPOUNDED

Supreme Court Decision Reversing Equity Decree.

Judge Robinson's decree in the case of Sophie H. Kahaleaahu vs. Manuel S. Pereira and S. Kobayashi is reversed by a unanimous opinion of the Supreme Court, written by Chief Justice Frear. The case was submitted June 17, and decided November 12, 1903.

In conversing about the decision yesterday evening Judge Robinson said it sustained him in asserting the right of the plaintiff to dower, and only required amendment of his decree with regard to the time from which the damages should be computed. His decree held it was from the husband's death, whereas the Supreme Court makes it from date of demand.

The syllabus and some extracts from the decision are given below:

SYLLABUS OF OPINION.

A suit for dower may be barred by the general statute of limitations applicable to actions for the recovery of land, but the statute does not necessarily begin to run from the death of the husband, as for instance, when, as in this case, the widow is by the statute permitted to occupy with the heir, without assignment of dower, until the latter objects, and the land remained vacant, and the heir and the widow lived together on adjoining land, and the heir or her grantee did not claim adversely until nine years after the husband's death.

Damages for the detention of dower are allowed under the circumstances only from the date of demand.

STATEMENT OF CASE.

This is a suit in equity for assignment of dower and for damages for detention of dower. The plaintiff's husband died intestate seized of the land in question June 29, 1871, leaving a minor daughter as his only heir and the plaintiff as dowress. The land, which is situated on Liliha street, Honolulu, was then vacant and remained so until the daughter, having come of age, conveyed it to one Naukana, October 7, 1880. During that period, the widow and daughter lived together on land adjoining the land in question. Naukana leased the land, March 20, 1882, to one Wong Quing for ten years at $65 a year and on April 23, 1883, conveyed it to the defendant Pereira, who, some time after the expiration of the lease, filled in the land, which was low and wet, and on May 1, 1899, leased it for fifteen years at $300 a year to the defendant Kobayashi, who erected a hospital upon it. The Circuit Judge held that the plaintiff was entitled to dower and, finding that dower in the land could not be set apart without injury to the owner, ordered it to be paid in money amounting to $511.76, being the present worth, at the legal rate of interest, of one-third the income for the widow's expectancy of life, and allowed further the sum of $827.79 damages, being one-third the rents, and interest thereon, received under the two leases up to the time of the interlocutory decree. The defendant Pereira appealed.

TITLE TO DOWER.

The first question is whether the plaintiff is now entitled to dower at all. No question is raised as to the amount at which her dower interest, if any, was valued. It is contended that her right of action accrued on the death of her husband, in 1871, and that therefore she is barred by the statute of limitations, the period prescribed by which for real actions was twenty years at the time this suit was begun, in September, 1899. There is much difference of opinion elsewhere as to whether general statutes of limitations are applicable to actions for dower (See 19 Am. & Eng. Enc. of Law, 2d Ed., 205; 19 Id. 180) and we have no special statute on the subject; but in our opinion the better rule is that the general statute does apply, and it was so stated in Makauhana vs. Pua, 6 Haw. 651.

WHEN STATUTE BEGINS.

But does it run from the time the right to dower accrued, in this case June 29, 1871, when the husband died, or from the time an adverse claim is set up against it, in this case April 23, 1883, when the daughter conveyed? If the latter date, the twenty years had not elapsed when this suit was begun. There is no evidence that the daughter claimed adversely to the widow before that date. The land in question was vacant and they both lived together on adjoining land. There is upon this question also—as to when the statute begins to run—some difference of opinion elsewhere. * * *

It seems to us that when, as in this case, the widow had a right under the statute to occupy the land with the heir or to receive her third of the rents, issues and profits, until objection should be made by the heir, and when the land remained entirely unoccupied, and both heir and widow lived together on adjoining land in a friendly way, the widow would be under no obligation to call for an assignment of dower and the statute would not begin to run until one of them began to claim adversely to the other. There was no occasion before that for the widow to assert her rights.

It is argued, however, that equity is not bound by the statute of limitations and may deny relief on the ground of laches, even when the statute has not run. It is true "equity aids the vigilant, not those who sleep upon their rights," but it is also true that "equity follows the law" and this seems to be a case for the application of the latter maxim.

WHEN DAMAGES BEGIN.

The remaining question relates to the time from which damages should be allowed for detention of dower. Should it be from the death of the husband, from the beginning of the adverse possession, from six years back, from demand or from the commencement of the suit? This is often settled by statute, and in the absence of statute some nice distinctions are drawn from varying states of facts, and courts differ greatly.

To allow in favor of one who, as in this instance, has slept on her rights and against one who, as here, purchased in good faith, and who might have been in possession for only a short time, damages from the husband's death, in this instance, for some thirty years, does not seem quite right to say the least. That was not allowed at common law and is not required by any statute. Nor is there any rule of law or statutory provision requiring or permitting an allowance from the time the defendant purchased, say, for about twenty years in this instance. * * *

When the heir's alienee has purchased and held in good faith and the widow has slept on her rights, equity should not allow a recovery prior to demand. * *

The decree appealed from is reversed and the case is remanded to the Circuit Judge for such further proceedings as may be proper consistently with this opinion.

L. Andrews for the plaintiff; Robertson & Wilder for the defendant Pereira.

BOYD ON TOURISTS

Problem Club Told How It May Help.

"Tourist Traffic, How Can You and I Promote It," furnished the topic for a most interesting discussion at the Problem Club in the Y. M. C. A. rooms last evening. Mr. E. M. Boyd gave a very entertaining half hour talk on the subject, to the largest audience which has attended the club's meetings for months.

Mr. Boyd spoke of the difficulties with which the Hawaii Promotion Committee had to contend and asked the co-operation of all the people in getting tourists to come here. He also gave some interesting facts in connection with the crusade since it was inaugurated October 1st. The total cost of the advertising had been $6,500 which included the magazine displays. With that expenditure of money the committee expected to reach three and a half million readers. Comparing the work in Hawaii to other advertising propagandas, Mr. Boyd stated that when the Rock Island sent its new special train to the Pacific Coast, it spent $110,000 in advertising before the train left the Chicago depot. "And yet critics here call us extravagant," said he, "when we expend $15,000 in advertising beautiful Hawaii."

Mr. Boyd said he wanted to speak of the personal side of the tourist propaganda. He said that no man could be a success in what he taught unless he believed in it himself. One thing the Hawaii Promotion Committee struggled for was the sympathy and support of every citizen of Hawaii in the work. He himself believed in Hawaii as a tourist resort. But the committee's efforts would be circumscribed unless everyone assisted. The committee's work was impersonal; what is most needed is to have every one personally send to friends and start an inquiry directed towards Hawaii. This was most needed—the help of all citizens in the work. In this connection Mr. Boyd spoke of the work in California, the intensity with which residents boomed the State. Last year 85,000 tourists came to stay and there were 275,000 visitors altogether. This year preparations were being made to entertain 500,000 visitors.

In California railroad men had told him that the success in California was due to the personal interest taken by residents of that State in inducing tourists to come. "Unless the people of Hawaii believe that this is a good place to come to and to stay, and impress this upon their friends, we must fail. If we succeed," concluded Mr. Boyd, "it is your success. If we fail it is not your failure but ours."

A general discussion followed in which many of those present took part. Dr. C. B. High said he believed thoroughly in the tourist proposition and that the campaign had been too long neglected in the past. Hundreds of thousands of tourists had passed through here who might have been made advertising agents for the Islands. He also said that if anything happened to sugar, the country would have to depend upon tourists, and that because sugar had been king, people had been too independent to pay attention to tourists in the past.

W. C. Weedon also indorsed Mr. Boyd's remarks and said he believed in Hawaii. He had first lectured here many years ago and had come back to live. He believed also that Hawaii could be made not only a tourist resort but a place for homes.

John Martin interjected a little spirit into the discussion with the remark, "Lord save me from a place built up by tourists. Look at Pasadena," he said, "They eat, sleep and die there. That's Pasadena. All you get is the sick." He also said he had rather have a mechanic than a tourist in Hawaii.

Mr. Martin refused to explain what he meant but promised to see Mr. Boyd later and give him some facts. "We all make allowances for Mr. Martin," remarked Rev. E. S. Muckley, the chairman.

E. T. Tannatt, Robt. Law and others also took part in the discussion. Mr. Boyd was given a vote of thanks.